

EURO-03526-USA-PR

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IN UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In Re Application Ser. No. 75-740,867

Published: June 6, 2000

Mark: DIFFUSION NO. 1



02-25-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #66

EUROPEENNE DE PRODUITS DE
BEAUTE

Opposition No. 119,940

Opposer,
v.

KOSOVA, ANNA

Applicant.

MOTION TO EXTEND OPPOSER'S DISCOVERY PERIOD

Opposer, Europeenne De Produits De Beaute, hereby requests that the period for Opposer to take discovery be extended to sixty (60) days following the Board's ruling on Opposer's Motion To Compel Discovery Responses, filed concurrently herewith, and that the testimony periods be reset accordingly.

On July 18, 2001, the Board issued an Order setting the trial dates in the above proceeding, which provided for discovery to close on December 1, 2001.

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This further extension is requested because Applicant to date has not responded to Opposer's First Set of Interrogatories to Applicant, which was initially served on Applicant's former Attorney on May 8, 2001. On May 30, 2001, Opposer and Applicant's Attorney agreed to extend discovery and testimony periods. On May 30, 2001, Opposer filed a Motion with Consent to Extend Discovery and Testimony Period with the Board. Applicant's Counsel filed a Request to Withdraw as Counsel on June 4, 2001. On June 18, 2001, the Board granted Applicant's Attorney's Request to Withdraw as Counsel. The Board also suspended proceedings and allowed Applicant thirty (30) days to appoint new counsel or to file a paper stating that Applicant chooses to represent herself. Applicant's Attorney had not responded to Opposer's Interrogatories. On July 18, 2001, Applicant filed a Response with the Board, advising that she would represent herself. On August 6, 2001, Opposer served a courtesy copy of Opposer's First Set of Interrogatories on Applicant. Applicant did not serve an Answer to Opposer's Interrogatories. Opposer sent letters to Applicant on November 6, 2001 and on January 3, 2002, advising that Opposer would file a Motion to Compel if Applicant did not respond to the Discovery Requests within ten (10) days. Applicant did not serve an Answer to Opposer's Interrogatories nor did she contact Opposer to request an extension of time to respond to the Discovery Requests. Applicant failed to respond to Opposer's correspondence of November 6, 2001 and January 3, 2002. Opposer accordingly has filed a Motion To Compel Applicant's Discovery Responses, a copy of which (without exhibits) is attached hereto.

The extension is required to allow Opposer to receive and review Applicant's discovery responses and take any necessary follow up discovery. See, Sunkist Growers, Inc. v. Benjamin

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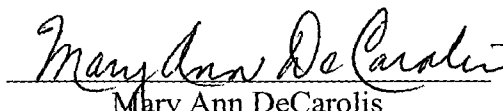
Ansehl Co., 229 USPQ 147, 149 (TTAB 1985).

Given the fact that it is Applicant's failure to respond to Opposer's August 6, 2001 discovery requests which creates the need for additional time for completion of Opposer's discovery, it is submitted that the discovery period should be reset solely for the purpose of providing Opposer a second opportunity to take discovery.

EUROPEENNE DE PRODUITS DE BEAUTE

February 25, 2002

By:



Mary Ann De Carolis
Attorney for Opposer
Europeenne De Produits DeBeaute
c/o Revlon Consumer Products Corporation
625 Madison Avenue
New York, New York 10022

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OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES

Opposer, Europeenne De Produits De Beaute, in accordance with Rule 37 of the Federal Rules and Procedure and Rule 2.120(e) of the Trademark Rules of Practice, hereby moves for an Order compelling Applicant Anna Kosova to: answer Opposer's First Set of Interrogatories to Applicant. The Declaration of Mary Ann DeCarolis is submitted herewith in support of the motion. Concurrently, with the filing of this motion, Opposer also has moved to extend Opposer's discovery period to provide an opportunity to review Applicant's responses to its initial discovery requests and

EXHIBIT A

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take any necessary follow up discovery.

The grounds for Opposer's motion to compel discovery are set forth below.

On May 8, 2001, Opposer served Opposer's First Set of Interrogatories on Attorney for Applicant. A copy of Opposer's Discovery Requests is attached as Exhibit A.

Opposer and Attorney for Applicant agreed to extend discovery and testimony periods. ON May 30, 2001 Opposer filed a Motion with Consent to Extend Discovery and Testimony Periods with the Board. A copy of the Motion with Consent is attached as Exhibit B.

On June 4, 2001, Applicant's Attorney filed a Request to Withdraw as Counsel for Applicant with the Trademark Trial and Appeal Board. Applicant's Attorney had not served an Answer to Opposer's Interrogatories.

On June 18, 2001, the Board granted Applicant's Attorney's Request to withdraw as Applicant's Counsel. The Board suspended proceedings and allowed Applicant thirty (30) days to appoint new counsel or to file a paper stating Applicant chooses to represent herself.

On July 18, 2001, Applicant filed a Response with the Board, advising that she would represent herself.

On July 26, 2001, the Board acknowledged Applicant's statement that she would represent herself and declared that proceedings were now resumed. The Board also reset the discovery and

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trial dates in this opposition proceeding.

On August 6, 2001, Opposer served a courtesy copy of Opposer's First Set of Interrogatories on Applicant. A copy of the correspondence and the Interrogatories are attached as Exhibit C.

On November 6, 2001, Opposer sent a letter to Applicant advising that no Answer to Opposer's First Set of Interrogatories had been served upon Opposer. Opposer further advised that if Applicant failed to respond to Opposer's First Set of Interrogatories within ten (10) days, Opposer would file a Motion to Compel a Response to Opposer's Discovery Requests with the Board. A copy of this letter is attached as Exhibit D.

Applicant did not serve an Answer to Opposer's First Set of Interrogatories nor did Applicant respond to Opposer's letter of November 6, 2001.

On January 3, 2002, Opposer sent Applicant a second letter advising that no Answer to Opposer's First Set of Interrogatories had been served. Opposer further advised that if Applicant failed to answer Opposer's First Set of Interrogatories within ten (10) days, Opposer would file a Motion to Compel a Response to Discovery. A copy of this letter is attached as Exhibit E.

Applicant did not serve Answers to Opposer's First Set of Interrogatories nor did she respond to Opposer's letter of January 3, 2002.

Applicant neither responded to the discovery requests nor requested an extension. Despite

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Opposer's repeated requests, Applicant has continued to fail to respond to the discovery and has

simply ignored Opposer's efforts to resolve the matter without Board intervention. As set forth in the Declaration of Mary Ann DeCarolis submitted herewith, there has been no response to

Opposer's counsel's service of the courtesy copy of Opposer's First Set of Interrogatories, its November 6, 2001 letter or its January 3, 2002 letter.

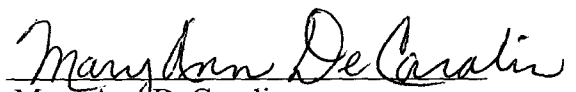
Opposer accordingly requests an Order compelling Applicant to answer Opposer's First Set of Interrogatories to Applicant, all without objection. Envirotech Corporation v. Compagnie Des Lampes, 219 USPQ 448 (TTAB 1979); Crane Co. v. Shimano Industrial Co., Ltd., 184 USPQ 691 (TTAB 1975).

Respectfully submitted,

EUROPEENE DE PRODUITS DE BEAUTE

Date: February 25, 2002

By:



Mary Ann DeCarolis
Attorney for Opposer
c/o Revlon Consumer Products Corporation
625 Madison Avenue
New York, New York 10022

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DECLARATION OF MARY ANN DECAROLIS IN SUPPORT OF
OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES

I, Mary Ann DeCarolis, under penalty of perjury, do hereby declare as follows:

1. I am one of the counsel for opposer, Europeenne De Produits De Beaute, in the above proceeding.

2. On May 8, 2001, I served Opposer's First Set of Interrogatories on Attorney for Applicant. A copy of Opposer's Discovery Requests are attached to Opposer's Motion to Compel as Exhibit A.

3. On May 30, 2001, Attorney for Applicant and myself agreed to extend the discovery and testimony periods. On May 30, 2001, I as counsel for Opposer filed a Motion with Consent to Extend Discovery and Testimony Periods with the Board. A copy of the Motion with Consent is attached to Opposer's Motion to Compel as Exhibit B.

4. Applicant's Attorney did not serve a Repsonse to Opposer's First Set of Interrogatories.

5. On June 4, 2001, Applicant's Attorney filed a Request to Withdraw as Counsel for Applicant with the Trademark Trial and Appeal Board.

6. On June 18, 2001, the Board granted Applicant's Attorney Request to Withdraw as Applicant's Counsel. The Board suspended proceedings and allowed applicant thirty (30) days to appoint new counsel or to file a paper stating that Applicant chooses to represent herself.

7. On July 18, 2001, Applicant filed a Response with the Board, advising that she would represent herself.

8. On July 26, 2001, the Board acknowledged Applicant's Response that she would represent herself and declared that proceedings were now resumed. The Board also reset the discovery and trial dates in this opposition proceeding.

9. On August 6, 2001, I, as counsel for Opposer, served a courtesy copy of Opposer's First

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set of Interrogatories on Applicant. (the same had originally been served on Applicant 's former Counsel on May 8, 2001). A copy of the correspondence and the Interrogatories are attached to Opposer's Motion to Compel as Exhibit C.

10. Applicant did not respond to Opposer's Interrogatories or request for an extension to respond.

11. On November 6, 2001, I sent a letter to Applicant advising that no Answer to Opposer's First Set of Interrogatories had been served upon Opposer. I further advised that if Applicant failed to respond to Opposer's Interrogatories within ten (10) days, Opposer would filed a Motion to Compel a response with the Board. A copy of my letter is attached to Opposer's Motion to Compel as Exhibit D.

12. Applicant did not serve an Answer to Opposer's Interrogatories nor did she respond to my letter of November 6, 2001.

13. On January 3, 2002, I sent Applicant a second letter advising that no Answer for Opposer's Interrogatories had been served. I further advised that if Applicant failed to answer Opposer's Interrogatories within ten (10) days, Opposer would file a Motion to Compel a Response to Discovery. A copy of this letter is attached to Opposer's Motion to Compel as Exhibit E.

14. Applicant did not serve an Answer to Opposer's Interrogatories nor did she respond to my letter of January 3, 2002.

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15. To date, Applicant has failed to respond either to the discovery requests or to my letters.


MARY ANN DECAROLIS

Dated: New York, New York
February 25, 2002

CERTIFICATE OF SERVICE

I, Mary Ann DeCarolis, an attorney for opposer, hereby certify that a copy of the foregoing Opposer's Motion To Extend Opposer's Discovery Period is being served upon Anna Kosova, 2325 Third Street, Suite 427, San Francisco, CA 94107, on this 25th day of February 2002 by Express Mail, postage prepaid.

Mary Ann De Carolis

EXPRESS MAIL CERTIFICATE

"EXPRESS MAIL" MAILING LABEL NUMBER EF13010347YU5

DATE OF DEPOSIT February 25, 2002

TYPE OF DOCUMENT FOR MOTION TO EXTEND OPPOSER'S DISCOVERY PERIOD
ON BEHALF OF EUROPEENNE DE PRODUITS DE BEAUTE

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above, by being handed to a postal clerk or by being placed in the express mail box before the postal date of the last pick up, and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Mary Ann DeCarolis

(typed or printed name of person mailing paper)

Mary Ann DeCarolis
(signature of person mailing paper)

Date: February 25, 2002
New York, New York